

FIREFIGHTER

Retained Pensions Special April 2006

Momentous House of Lords Decision

AN END TO 60 YEARS DISCRIMINATION AS RETAINED FIREFIGHTERS WIN HISTORIC CASE AT HOUSE OF LORDS

The House of Lords decision is being hailed as a landmark judgement by those in the legal profession dealing with employment law. The case has been billed by The Lawyer magazine as one of the most important legal cases of 2006, and the Fire Brigades Union has been loudly applauded for continuing to fight the case even when the Court of Appeal's decision went against them.

The House of Lords backed Retained Firefighters battling for equal pension and sick pay rights. The landmark decision paves the way for Retained Firefighters in Fire and Rescue Services across the UK to have access to the Firefighters Pension Scheme (FPS).

The Law Lords upheld the appeal brought by the Fire Brigades Union (FBU) in relation

to rights for over 15,000 of its members working the Retained Duty System (RDS) across the UK. The Law Lords effectively said that retained and Whole-time Firefighters are employed on the same "type of contract".

The Law Lords ruled the Employment Tribunal (ET) which rejected the Fire Brigade Union's case, had focused too much on differences rather than similarities

between Wholetime and Retained contracts. The decision also means that tens of thousands of part-time workers will be able to use the new Part-Time Workers Regulations to compare their work with that of full-time colleagues.

The case centres on the exclusion of Retained Firefighters from the Firefighters' Pension Scheme and worse treatment under the sick pay scheme. They claimed they were being treated differently because they are part-time workers and that this was unlawful.

The FBU, which backed the test case throughout, says this case will secure fairness and justice for every Retained Firefighter in the country. Without Retained Firefighters most areas of the country would not have a full fire service and some would have none at all.

The case was taken by 12 FBU Retained Firefighters, six



FBU General Secretary Matt Wrack said:

"This case was about securing fairness and justice for thousands of Retained Firefighters across the UK. They are first class Firefighters and they should not be given, nor should they accept, second class employment rights."

This momentous decision paves the way to ending 60 years of discrimination against Firefighters working the Retained Duty System.

Retained firefighters have worked on the front line at almost every major incident. Huge areas of the United Kingdom rely completely on Retained Firefighters and when the public are being rescued they don't stop to ask your employment status."

from Kent and six from Berkshire.

Union solicitor Richard Arthur said: *"This case will impact on hundreds of thousands of part-time workers who will be able to use the regulations to get equal treatment. It is a truly momentous decision."*

The FBU was represented by leading employment lawyers Thompsons solicitors, Robin Allen QC and barrister Martin Seaward.



National Retained Committee Secretary, Pete Preston a Retained Watch Manager in Colwyn Bay, North Wales said:

"This ruling now gives us the legal right to be recognised and treated as part time workers and as such will prevent us being discriminated against by our employers by virtue of the duty system we work. Brigades who still choose to prevent Retained firefighters from developing or pursuing their careers with Fire & Rescue Services based on the duty system they work would be advised to be on notice that they will need to justify such a position legally. In light of this ruling that is likely to be a very tall order indeed."



The FBU's Executive Council Member for Retained Firefighters Tam Mitchell, a serving Retained Crew Manager at Carlisle in Strathclyde said:

"No longer will we have Firefighters working the RDS serving their communities for 30 years or more being left without a pension when they retire. Having secured holiday rights, sick pay rights and proper time off, we have now taken a major step to securing pensions."

The Fire Brigades Union has fought this case for many years against great odds. Once again we have proved we are the only organisation in the fire service with the will and the means to protect firefighters working the retained duty system. It should now be even clearer to Retained Firefighters, that when it comes to fighting for the pay and conditions of RDS personnel, there is only one representative body that can do the business."

The FBU has campaigned for many years for Retained Firefighters to be included into the FPS. At long last that perseverance and commitment has resulted in a decision that can only be described as momentous."

Following the ruling by the House of Lords and the steering given in this ruling, the industrial tribunal meet again in Croydon at a date yet to be set, though this is widely anticipated to be in September this year. It is also expected that this hearing will be scheduled to last around 6 to 7 days.

Richard Arthur at FBU Solicitors Thompsons said:

"The victory in the House of Lords was the culmination of a carefully planned legal strategy developed by the FBU to secure pension rights for retained members."

As long ago as 1997, the FBU started to investigate with its lawyers whether claims could be pursued on the basis that retained members were being discriminated against by not being allowed to join the Pension Scheme. The union instructed its lawyers to use the law proactively and to come up

with an innovative solution to a longstanding problem."

The union received detailed advice that claims based on sex discrimination would be unlikely to succeed. This was because a comparison had to be made with the treatment of whole-timers and the proportion of women amongst retained members was not sufficiently different to the proportion of women amongst whole-timers."

The FBU therefore focussed on the EU Part-Time Workers Directive which became effective in the UK in 1998. When that Directive was implemented into UK law, the

FBU's lawyers gave evidence to the Government Committee on Part-Time Working to ensure that the UK regulations covered retained members.

The UK Regulations were eventually drawn in a more restricted way than was originally envisaged. But the FBU's legal advice was that a claim was still possible-although there would be numerous legal hurdles to overcome. The UK Regulations came into force in July 2000 and the FBU straightaway launched mass claims on behalf of retained members.

Those claims were the first to be brought under the new Regulations.

Test cases were selected from the Kent and Medway and Royal Berkshire Fire Authorities. They were resisted by the two Brigades and the Office of the Deputy Prime Minister. The FBU called expert evidence from specialist actuaries and also from officers and retained members, and was represented by a specialist team of barristers and solicitors. But the Employment Tribunal rejected the claims saying that the contracts and the work of retained and whole-time members could not be compared.

The FBU's appeal to the Employment Appeals Tribunal was rejected-

The Court of Appeal, whilst finding the contracts to be the same, still rejected the appeals finding that the work was not sufficiently similar.

The FBU then had to get permission to appeal to the House of Lords and eventually won the case after a two day hearing in January. The House of Lords, by a narrow majority

of three to two, confirmed that not only were retained contracts of the same type as whole-timers', but also that the other courts had failed to compare the two jobs properly.

As Baroness Hale said in the House of Lords, it is clear that retained firefighters provide fire cover for large areas of the country. The work of retained and whole-time fire-fighters at the fire ground is the same and that factor is central. In the longer time, any differences attributable to community fire safety work were likely to disappear as more and more retained members undertake non-operational duties.

The case will now have to be re-considered by the Employment Tribunal in Croydon, which will have to determine finally whether the work of retained members can be compared to that of whole-time members. The House of Lords has given a heavy steer that the answer to that should be a resounding "yes".

This is an important test case. The union had to break into new legal territory to win this case for retained members.

This victory also sets an important precedent for all other part-time workers, beyond the Fire Service. It will now be much easier for them to compare their contracts and work with that of full-time colleagues, with the result that they too can claim equal pay, pensions and other rights in the workplace. The FBU has led the way for all part-timers and set the precedent in the highest Court in the land. "



**NRC Chair
Harry
Cotter, a**

**Retained Watch
Manager at
Ballymena in
Northern Ireland said:**

"The FBU has always believed that to treat Retained firefighters less favourably than Wholetime Firefighters was fundamentally unjustifiable. It has invested huge sums of money in pursuing this belief through the courts to achieve this result. No other organisation that claims to represent the interests of Retained Firefighters has the resources to undertake actions such as this."

Harry has been an FBU member since joining the brigade over 30 years ago and was one of the key activists instrumental in the motivating and organising the setting up of the National Retained Committee.

"The FBU's victory at the House of Lords on March 1st 2006 marks one of the most significant events in respect of the progression of the rights of Firefighters working the Retained Duty System. This is the biggest achievement by any union or organisation on behalf of Retained Firefighters. I believe, that in the fullness of time this will probably be rated as one of our union's greatest victories."

Following this ruling, the FBU has received significantly higher numbers of requests for application forms to join. This can only strengthen the FBU's position when negotiating National Conditions of Service on behalf of Retained Members. The FBU's policy of representing all sections of the Fire and Rescue Services with equality and fairness regardless of duty system worked has been demonstrated on many occasions both at National and local level. This has repeatedly been confirmed by huge investments, both financial and in resources to deal with issues such as equality of payment, a right to holiday payments, and now pensions too. Our commitment to improving the rights and conditions for Retained members will not rest with these victories and many outstanding issues are being actively researched and preparations to challenge these inequalities are underway.

Retained Firefighters who are not members of the FBU have been encouraged by the FBU's effort and time spent pursuing the pensions issue which has shown there is only one union that has the strength and available resources to progress the interests of RDS firefighters.

Given that there are a number of areas within the RDS conditions of service which could be looked at in terms of less favourable treatment, and as the FBU is the only representative body involved in negotiations at NJC level, now is an even better time to fill in an application form to join the FBU.

The Law Lords ruling comes on top of another recent success for Retained members, achieved by the FBU; protection for existing members on the injury pension, irrespective of whether they join the new FPS or not.

FBU National Retained Committee

CONTACT US:

EC Member:	Tam Mitchell thomas.mitchell@fbu.org.uk	07801 047617
Secretary:	Pete Preston peter.preston@fbu.org.uk	07971 086990
Chair:	Harry Cotter nrcc@fbu.org.uk	07718 637251
Region 1: Scotland	Tam Mitchell thomas.mitchell@fbu.org.uk	07801 047617
Region 2 : Northern Ireland	Brian Armstrong brian.armstrong@fbu.org.uk	07905 584518
Region 3: North East	Mick Jones mick.jones@fbu.org.uk	07799 430777
Region 4: Yorkshire & Humberside	Rick Arrand rick.arrand@fbu.org.uk	07970 010275
Region 5: North West	Miles Parkinson miles.parkinson@fbu.org.uk	07834 656107
Region 6: West Midlands	Sean Grant sean.grant@fbu.org.uk	07783 703739
Region 7: East Midlands	Ray Price ray.price@fbu.org.uk	07881 914589
Region 8: Wales	Grant Mayos grant.mayos@fbu.org.uk	07967 041013
Region 9: East Anglia	Kevin Kiddell kevin.kiddell@fbu.org.uk	07967 041013
Region 11: South East	Richard Potter richard.potter@fbu.org.uk	07810 012122
Region 12: South	Bob Dewis robert.dewis@fbu.org.uk	07917 065872
Region 13: South West	Leigh Redman leigh.redman@fbu.org.uk	07971 484039

If you have any question or issues regarding the House of Lords ruling, pensions issues or indeed any other Retained related issues, please contact in the first instance your regional Retained representative whose details are supplied above. If you are not sure who to contact, forward your enquiry to the National Retained Committee Secretary.

Please make sure you advise your Brigade Membership Secretary of any change of address and Head Office of changes to next of kin or nominations for benefits.